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| FISH & RICHARDSON PC | | | | EXAMINER | |
| 225 FRANK BOSTON, N | |) | LAMBERTSON, DAVID A | | |
| | | | | ART UNIT | PAPER NUMBER |
| | | | | 1636 | <u> </u> |

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary David A Lambertson | | | Application No. | Applicant(s) | | | | |
|--|---|--|-------------------------|--------------|--|--|--|--|
| Examiner David A Lambertson 1336 | | | • | | | | | |
| David A Lambertson 1536 | | Office Action Summary | | | | | | |
| The MALING DATE of this communication appears on the cover sheet with the correspondence address :- Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MALING DATE OF THIS COMMUNICATION. Entersors for the reply be suited used to \$10 CRF 1.13(a), in a overal, however, may a reply be timely filed if the period for reply specialized above is less than biliny (30) stays, as reply within the statistics of Toric F1.13(a), in a overal, however, may a reply be timely filed if the period for reply specialized above is less than biliny (30) stays, as reply within the statistic or reply is apposed to reply secured part of the period for reply within the statistic period will appear with sign be \$1,000 (MONTHS from a mailing date of this communication, even if timely filed, may reduce any search administration adjustment. See 37 CFR 1.74(b). **Status** 1) ② Responsive to communication(s) filed on \$08 February 2002. 2a) ☐ This action is FINAL 2b) ② This action is non-final. 3] ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex pario Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ② Claim(s)123 Islare pending in the application. 4) ② Claim(s)islare rejected. 7) ☐ Claim(s)islare allowed. 6) ☐ Claim(s)islare allowed. 6) ☐ Claim(s)islare rejected to. 3) ② Claim(s)islare rejected to. 4) ② Claim(s)islare rejected to. 4) ☐ The proposed drawing correction filed onislare: a) ☐ accepted or b) ☐ objected to by the Examiner. Application Papers 9) ☐ The specification is objected to by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) ☐ The proposed drawing correction filed onislare: a) ☐ accepted or b) ☐ disapproved by the Examiner. If approved corrected drawings are required in reply to this Office action. 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U. | , | | | | | | | |
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| THE MAILING DATE OF THIS COMMUNICATION. Extractors of time may be existed but under the provisions of 3°C FR 1.13(d), in no event, however, may a reply be smely filed after SX (6) MOXITIS from the mailing date of his communication. Fallow to reply is sectioned before the mailing date of his communication after the mailing date of his communication. Fallow to reply within the sell or extended opening for reply will by statute, cause the application to become ARANDONED (18 U.S. 6 ± 13). Any reply sectioned by the Office alter then there incombined after the mailing date of his communication, even if timely filed, may reduce any. Status 1) Responsive to communication(s) filled on 08 February 2002. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-33 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are rejected. 7) Claim(s) is/are allowed. 6) Claim(s) 1-33 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in aboyance. See 37 CFR 1.85(a). 11) The proposed drawing correction filed on is/are: a) approved b) disapproved by the Examiner. Priority under 35 U.S.C. §§ 119 and 120 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some 'o None of: 1. Certified copies of the priority documents have been received in Application No. application from the International Bureau (PCT Rule 17 /2(a)). See the attached detailed Office action for a loaim for domestic priority under 35 U.S.C. § 119(e) (to a provisional appli | Period for Reply | | | | | | | |
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, drawn to a viral vector for the recombinant production of a protein comprising a packaging sequence with at least two codons altered to reduce the occurrence of fusion proteins, classified in class 435, subclass 320.1.
- II. Claims 13-33, drawn to a viral vector for the recombinant production of a protein comprising a packaging sequence with at least two codons altered to reduce the occurrence of fusion proteins and a proviral recovery sequence, classified in class 435, subclass 320.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions and different effects and are not disclosed as capable of being used together. Specifically, the vector of invention II comprises an additional element, the proviral recovery sequence, which is not present in the viral vector of invention I. As a result, the viral vectors comprise different nucleotide sequences and thus have different structures and functions. In addition, the viral vectors have different effects, owing to the presence of the viral recovery sequence of the vector of invention II, which affects the elements required for the

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recovery of the provirus. Because the inventions have different functions and effects the inventions are patentably distinct.

Because these inventions are distinct for the reasons given above and the non-patent literature search required for Group I is not required for Group II (owing to the presence of the proviral recovery sequence in the vector of invention II), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Lambertson whose telephone number is (703) 308-8365. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on (703) 305-1998. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

David A. Lambertson March 16, 2003

PATENT EXAMINER

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